United Nations S/2004/352

Security Council

Distr.: General
4 May 2004

Original: English

Letter dated 4 May 2004 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the President of the Security Council

Upon the instruction of my Government, I have the honour to request that the Plan for the Political Solution to the Situation in Kosovo and Metohija (see annex),* adopted by the National Assembly of the Republic of Serbia on 29 April 2004, be circulated as a document of the Security Council.

(*Signed*) Nebojsa **Kaludjerović**
Permanent Representative

* The Plan is reproduced in the language of submission only.

04-33865 (E) 060504

Annex to the letter dated 4 May 2004 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the President of the Security Council

In accordance with the Resolution of the National Assembly of the Republic of Serbia on Kosovo and Metohija of 26 March 2004, the Declaration of the National Assembly of the Republic of Serbia on Kosovo and Metohija of 27 August 2003, the Declaration of the National Assembly of the Republic of Serbia on the situation in Kosovo and Metohija, the obligations of the international community and the Government of the Republic of Serbia of 31 May 2001 and the Resolution of the National Assembly of the Republic of Serbia on the situation in Kosovo and Metohija and the position of the Serb people and members of other non-Albanian communities of 4 May 2001,

In accordance with the obligation of the Republic of Serbia, as a member State of the State Union of Serbia and Montenegro, to fully contribute to the consistent implementation of the United Nations Security Council resolution 1244 of 10 June 1999, the Military-Technical Agreement on Kosovo and Metohija of 9 June 1999 and the Common Document on Cooperation between the Federal Republic of Yugoslavia and the United Nations Interim Administration Mission in Kosovo of 5 November 2001,

Taking into account that Kosovo and Metohija is an integral part of Serbia and of the State Union of Serbia and Montenegro,

On the basis of Article 73, para 2, of the Constitution of the Republic of Serbia and Article 130 of the Rules of Procedure of the National Assembly of the Republic of Serbia ("Official Gazette of the Republic of Serbia, No. 32/02 – revised text, 57/03, 12/04 and 29/04),

The National Assembly of the Republic of Serbia, at its Tenth Session of its First Regular Sitting in 2004, held on 29 April 2004, passed the

DECISION
ON THE ADOPTION OF THE PLAN FOR THE POLITICAL SOLUTION TO THE CURRENT SITUATION IN KOSOVO AND METOHIJA

1. This decision determines the Plan for the political solution to the current situation in Kosovo and Metohija.

The plan for the political solution to the current situation in Kosovo and Metohija has been attached to this decision and forms its integral part.

2. The Government of the Republic of Serbia shall be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija in carrying out the policy of the Republic of Serbia and executing other competences in accordance with the Constitution and the legislation.

Other State authorities in the Republic of Serbia shall also be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija in carrying out their competences related to Kosovo and Metohija, in accordance with the Constitution and the legislation.

The competent State authorities in the Republic of Serbia shall be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija, in their foreign policy activities related to the current situation in Kosovo and Metohija, in cooperation with the competent authorities of the State Union of Serbia and Montenegro and the competent authorities of the Republic of Montenegro.

3. The plan for the political solution to the current situation in Kosovo and Metohija represents the framework for possible discussions on territorial autonomy in Kosovo and Metohija with representatives of international community with and outside of Kosovo and Metohija.

4. The Government of the Republic of Serbia shall be obliged to inform the National Assembly of the Republic of Serbia of the implementation of this decision.

5. The present decision shall enter into force a day after its publication in the "Official Gazette of the Republic of Serbia".

RS No. 33
Belgrade, 29 April 2004

NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA

President

Predrag Marković

Attachment

PLAN FOR THE POLITICAL SOLUTION TO THE SITUATION IN KOSOVO AND METOHIJA

I. INTRODUCTION

The basic political and legal documents of contemporary civilisation have reaffirmed and strengthened the universal values of inherent dignity, equal and inalienable rights of all members of the human family, which create the foundation of freedom, justice and peace in the world. Documents such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms are explicit that the protection of human life, freedom and safety is the vital duty of each and every public authority, including governments and inter-state bodies – international organisations and their security and legal mechanisms.

This duty deserves utmost prominence if a mandate to guarantee and provide effective protection for these values has been granted to the United Nations, as is the case in the Province of Kosovo and Metohija, where the world organisation has been present since the end of the 1999 war, under the United Nations Security Council Resolution 1244. The United Nations was created to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person." However, the materialisation of the aforementioned civilisational values in Kosovo and Metohija has been either impossible or seriously hindered since the United Nations arrived in the province. The historic and inherited, as well as more recent reasons for such a situation, also include a vast ethnic distance, which often translates itself into ethnic hatred and intolerance. The most pronounced manifestation of the former is the extreme animosity of ethnic Albanians, who make up a majority of the Kosovo population, towards the Kosovo Serbs, hardly one-third of whom remained in the Province after it was placed under the UN authority in June 1999.

Serbia does not want to diminish any effort by the international military and civilian missions in Kosovo and Metohija to curb inter-ethnic conflicts, but the above said explains why the U.N. mandate, as provided by the U.N. Security Council Resolution 1244, has been so difficult to realise. Under the Resolution 1244, the United Nations was to "*establish and oversee the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo ..., to assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo..., and to protect and promote human rights*."

The events in Kosovo and Metohija that took place from March 17 to March 19, 2004, assuming the proportions of a pogrom and ethnic cleansing of Kosovo Serbs, unveiled the failure of the U.N. mandate to protect the life, freedom, safety, property, prosperity, religious sites and cultural heritage of the Kosovo Serb community. We believe that most of the U.N. mission discharged their duties conscientiously and in good faith, and that the reason for the failure was the objective inability of a

couple of tens of thousands of soldiers from NATO member states and other countries to offer effective physical protection to a hundred thousand Serbs, their property and churches, scattered throughout quite a large territory.

The nationalist intolerance demonstrated by the majority population is so powerful that it literally threatens the physical existence of local Serbs on the territory they have inhabited continually for more than ten centuries. Neither the United Nations nor the international community took this into account when they accepted a mission to preserve peace and protect human rights in Kosovo and Metohija. Consequently, it is necessary to change the institutional framework and the policy supposed to create conditions for a peaceful and normal life for all Serbs and other non-Albanians in Kosovo and Metohija and to ensure their safe and unimpeded return to the territory of Kosovo and Metohija, from which they were forcibly expelled. Likewise, it is necessary to provide for efficient protection and promotion of human rights in accordance with European norms and standards, since the Province, the State Union of Serbia and Montenegro, and the entire region for that matter, comprise a natural part of the European civilisation.

The suggested change should result in the principles, frameworks and institutions of a territorial autonomy for Serbs and other non-Albanians. This change will not threaten the territorial integrity of the Province, or the lawful rights of the Albanian ethnic community. The "autonomy-within-autonomy" principle does not mean that the fundamentals of a multiethnic and multicultural society will be abandoned. Quite the contrary, this is the only way to make it possible. Kosovo and Metohija and Serbia have a central place in the Balkans, whose multiethnicity and multiculturalism make it recognisable and historically viable. In time, the territorial autonomy will create conditions for the seriously damaged Kosovo society to embrace ethnic, religious and cultural reconciliation and mutual trust.

The international community has been trying for years to convince Serbia that the autonomy of Kosovo and Metohija requires special and atypical elements. Today, however, it has to admit that autonomy for Kosovo Serbs, for objective reasons and in order to make their survival possible, requires the same. It also entails the decentralisation of public affairs and the development of principles under which the population's needs can be met by the institutions closest to them. These are the principles of local democracy and self-administration that both the Council of Europe and the European Union have supported and promoted.

A plan for the political solution to the situation in Kosovo and Metohija set out in this document proceeded from the prevalent condition – Kosovo and Metohija is a part of the Republic of Serbia under the U.N. civilian and military administration. The document offers an outline of institutional guarantees for the position of the Serb community in the province. The document does not deal with the final status of Kosovo and Metohija, specified by the U.N. Security Council Resolution 1244.

II. TERRITORIAL AUTONOMY

2.1. The existing territorial organisation of Kosovo and Metohija mirrors the unsuccessful political and territorial concept of a multiethnic yet deeply divided society. It rests on an inaccurate presumption that the Kosovo autonomy, as defined under the 1974 Constitution, represented a rational and just solution for the ethnic relationship between the two dominant communities – Albanians and Serbs. Neither were the Albanians satisfied with it – as evidenced by a broad rebellion in the spring of 1981 – nor did the Serbs find it acceptable, since it offered no safeguards for their rights. The post-war period aside, the largest Kosovo Serb migration wave was recorded precisely in the early 1980s.

The major ethnic cleansing of Serbs took place before the March 17 pogrom – they were brutally driven out of their homes after June 1999. The Kosovo Serbs and other non-Albanians were confined to insignificant, scattered enclaves, from which they are slowly but surely disappearing. Having in mind this "reality", an independent Kosovo and Metohija offers itself as "a logical solution," notwithstanding the fact that it might destabilise the region with far-reaching consequences and bring about changes to the borders of Serbia and the state union of Serbia and Montenegro.

The Parliament of the Republic of Serbia believes that the only realistic, reasonable and just solution lies in genuine and effective actions aimed at creating conditions for multiethnicity in Kosovo and Metohija. In order to make it possible, it is necessary to root out any possibility of a Serb pogrom and violence happening again and, equally important, to enable all internally displaced persons to return to the province. Delaying their return for the lack of security and freedom of movement is no longer a plausible excuse. The safety of people in Kosovo and Metohija and the protection of their lives and property today really means a life within their own ethnic communities. This entails a proper territorial organisation of the province that allows for territorial autonomy for the Serbs, as well as other ethnic communities willing to accept it (Romanies, Gorans, Bosniaks/Muslims, etc.). The territorial autonomy does not call for a partition of Kosovo and Metohija, nor has it been conceived as a surrogate autonomy. It does not lead to a change of borders as the consequence of monoethnicity. Quite the contrary, it will prevent it by creating durable conditions for the survival and return of Serbs and other non-Albanians, so that multiethnicity, as a contemporary civilisational value, can be restored and developed in the future.

2.2. The municipalities, parts of municipalities and settlements in which Serbs comprised a majority before the 1999 exodus would be the areas of future autonomy. These territories would also include farmlands and other areas owned by the Serbs before the 1999 war. Having in mind that most of the exiled Serbs lived in urban areas, in which they either no longer exist or their numbers have been reduced to hundreds (Pristina, Pec, Gnjilane, Prizren, Urosevac, Istok, Lipljan, southern Kosovska Mitrovica, etc.), and that their return is not possible in the foreseeable future, **just compensation** (*compensatio iustum*) is a necessity.

In other words, the Serbs would be entitled to parts of the territory that links in a natural way Serb-dominated settlements, in which they previously did not make up a majority, but to which the Serbs exiled from their homes during the ethnic cleansing operation tend to return. This is a major precondition for the future areas of territorial autonomy to have the characteristics of a region. More

precisely, their geographical and natural features, economic and agricultural resources, the existing and potential transportation, energy, communal and other infrastructure, as well as other necessary elements, should combine into integrated territorial entities in which life and sustainable development, necessary for the repatriation of refugees to be a success, are possible.

Initially, these areas would not be contrived as urban centres, but realistic possibilities for them to develop into ones would be created. The areas that include urban centres would make available all segments of administration, security, education, health care, culture, sports and entertainment in accordance with the size and needs of the population. This requires a civilised, prosperous and democratically organised life. If it turns out to be impossible, the idea of a multiethnic and multicultural society, in which one ethnic and/or cultural community does not prosper at the expense of another, will be doomed to failure.

The territorial connection between autonomous areas is not a fundamental prerequisite for their existence and development, but a desirable one it certainly is. The fundamental safeguards for life and property and the freedom of movement are easier to achieve comprehensively in the areas linked in this way. Likewise, in determining the territorial entities it would be prudent to consider those close to central Serbia, because they are safer than areas in the Kosovo and Metohija interior. Communication with their compatriots in central Serbia, and, consequently, the very survival of the inhabitants of these areas, would be largely facilitated in this way.

The territorial autonomy of Serbs in Kosovo and Metohija would provide for five territorial entities/districts – the Central Kosovo District, the North Kosovo District, the Kosovo-Morava River Basin District, the Sarplanina Mountain District and the Metohija District. The most significant religious sites, as well as the Serb cultural and historical monuments that belong to or can be connected with the above listed districts, would be an integral part of them. The others would require appropriate guarantees by the Republic of Serbia, international guarantees and effective physical protection. The Districts would make up the Region - the political and legal holder of territorial autonomy within Kosovo and Metohija.

III. CHARACTERISTICS OF AUTONOMY OF THE AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

This Plan provides dual protection for the Serb community in Kosovo and Metohija – through territorial autonomy (arising from the establishment of the Region), which would protect most of the Serbs, and through cultural and personal autonomy, which would protect the rights of Serbs living outside the area of territorial autonomy (the Region). The two forms of protection, put together, define the term "Autonomous Serb Community in Kosovo and Metohija."

3.1. Organisation of the Region

In the areas in which the Serbs make up a compact population, territorial autonomy will be established in the form of the Region, with unified rights, powers and institutions. In the domains of rights and powers as defined under Item 3.1.2., legislative, executive and judicial powers will be

vested in citizens. In the exercise of their duties, government bodies are obliged to follow the principles of separation of power and its democratic control, as well as the tenets of ethnic, cultural and religious tolerance.

3.1.2. Competencies of the Region

In specifying the powers of the Region, the principle of subsidiarity has been used. This principle defines the powers that, under the circumstances, will be exercised more efficiently within the territorial autonomy and local self-government than within Kosovo and Metohija in its entirety. These powers are:

- Organisation of the Region (the organisation of its bodies and electoral process)
- Security (police) and civilian protection
- Judiciary
- Education
- Health care
- Social policy
- Culture, media and sports
- Protection of cultural heritage
- Marital and family relations, inheritance and guardianship
- Real estate property rights
- Privatisation process in the Region
- Public registers
- Official use of language and script
- Sanctions provided for violations of regulations falling within the jurisdiction of the Region
- Development programmes
- Local self-government
- International regional cooperation within the jurisdiction of the Region
- Spatial planning
- Ecological protection
- Infrastructure of importance for the Region
- Establishment of the sources of revenue (budget and annual final report)
- Public property management
- Industry on the territory of the Region
- Natural and mineral resources

- Agriculture, cattle breeding, forestry, hunting and fishery
- Services

In the above sectors, the powers are exercised in compliance with the prevailing policy of Kosovo and Metohija.

3.1.3. Bodies of the Region

The bodies of territorial autonomy (the Region) are: the Assembly of the Region, the Executive Council of the Region, administrative bodies and courts (first- and second-instance courts).

The Assembly of the Region is the highest representative and legislative body of territorial autonomy. It is elected in a secret ballot, on the basis of the universal and equal right to vote given to all citizens of the five Districts that comprise the Region. There is approximately proportional representation of each District in the unicameral regional assembly. The Assembly is granted legislative and supervising powers.

The Executive Council of the Region is the holder of executive powers. Together with administrative bodies, it implements the regulations passed by the Assembly of the Region, defines and runs policies falling within the jurisdiction of the Region. The Executive Council is also in charge of implementing the regulations passed by the Parliament of Kosovo and Metohija in the Districts that make up the Region.

The election of the Assembly, the Executive Council, administrative bodies and other organs and bodies, as well as the mode of their operation, is defined by regulations passed by the Assembly of the Region.

Judiciary. Apart from legislative and executive powers, the Region has judicial powers, too, effective in the Districts comprising the Region. The judiciary is to ensure that general legal norms are applied in an independent, unbiased and just manner in individual disputes involving citizens, legal persons or public authorities. As ethnic bias makes it very difficult to apply laws and establish the facts of relevance to their implementation in any community divided along ethnic lines, the exercise of judicial powers in Kosovo and Metohija has been quite problematic. Accordingly, it is necessary that judicial powers, save final decisions on legality, be exercised in the Region.

First-instance courts of general jurisdiction are organised on the municipal level, covering one or more municipalities within the Region. The Region also has a **second-instance court of general jurisdiction**. Commercial and administrative disputes would fall within the jurisdiction of the Regional Court.

The Supreme Court of Kosovo and Metohija is the highest court within the competence of the Province, beyond the constitutional-court control and protection of human rights and civil liberties guaranteed by the constitution and international treaties.

The Special Chamber of the Supreme Court on Constitutional Framework Matters is to establish a three-member Panel including a Serb judge of the Supreme Court, an Albanian judge of the Supreme Court and an international judge appointed by the Special Representative of the Secretary-General of the United Nations (SRSG). The Panel rules in all proceedings related to the regulations and actions by regional and local-self government bodies within the Region.

The Region has **municipal public prosecutors** and the **Regional Public Prosecutor**, performing their duties in accordance with the applicable law.

The Region has a substantial role in the election of judges of first-instance courts and the Regional Court, municipal public prosecutors and the Regional Public Prosecutor.

The judges and prosecutors are appointed by the SRSG, following nominations by the Assembly of the Region, selected from a list of candidates put forward by the Advisory Council for Regional Judiciary. The Assembly of the Region also proposes to the Parliamentary Council of the Kosovo Serb Community two-thirds of Serb candidates for judges of the Supreme Court of Kosovo and Metohija. The Assembly of the Region appoints regional magistrates.

The Provisional Institutions of Self-Government in Kosovo and Metohija transfer to the Region the responsibility of funding the courts, salaries and other income of judges, public prosecutors and magistrates on the territory of the Region.

3.2. Financial Autonomy of the Region

An open market economy is being built in Kosovo and Metohija, and provisions of this Plan do not and must not endanger a free flow of people, goods, services and capital in the territory of the Province.

The Budget of the Region has sufficient income for funding the operations under its competence. The budgetary sources of income include taxes, fees, charges and other dues, property income, donations, etc. The central authority provides subsidies for the Region to perform transferred duties. The Region is allowed to borrow for investment purposes. The Assembly of the Region passes the Budget and annual financial reports.

Income from customs duties, value added tax, excise taxes and other similar dues is channeled to the central authority. The Region and its municipalities will be entitled to income from direct taxes, including income tax, profit tax, property tax, administrative and utility taxes, public property usage tax and other taxes. The Region has an autonomous tax authority.

The Region and the municipalities comprising the Region own the property that serves the purpose of their operation.

On behalf of Kosovo and Metohija, the SRSG will enter into bilateral and regional free-trade agreements with the states of the region.

3.3. The Status of Serbs Outside the Territory of the Region

Aside from classic human rights guaranteed to all citizens of Kosovo and Metohija, the Serbs living outside the territory of the Region must enjoy special collective rights, necessary for them to preserve their identity. They are exercised not only as the rights arising from *status negativus*, which imply the obligation of the Provisional Institutions of Self-Government to restrain from interfering in the free exercise of these rights, or the rights arising from *status activus*, which allow the Kosovo Serbs to participate in public life and enjoy equal employment treatment in public services, but also as the rights inherent to *status positivus*, which imply the duty of the Provisional Institutions of Self-Government to take measures to improve the position of the Kosovo Serb community in parts of Kosovo and Metohija in which it has been threatened.

Proceeding from these assumptions, the Serb national community must be granted the following legal instruments – freedom of expression of national identity; prohibition of discrimination; measures to ensure equality; prohibition of forcible assimilation; development of the spirit of tolerance; prohibition of incitement to racial, national and religious hatred; the right to preserve identity (the right to use the Serbian language, the right to choose and use a personal name, the official use of language and script, the right to foster culture and tradition, the right to equal opportunity with respect to employment with public bodies, education in Serbian, the use of national symbols, access to public information in Serbian); the right of association; the right of cooperation with compatriots in the Region and outside the territory of Kosovo and Metohija; prohibition of the violation of rights of members of the Serb community; court protection for members of the Serb community; the establishment of a national council of the Serb community and the Ombudsman to protect the rights of members of national communities.

The rights of members of the Serb national community are listed more specifically in the Annex to this Plan.

3.4. The Position of other National Communities in the Region

Member of other national communities living in the districts that comprise the Region enjoy all the rights referred to under Paragraph 4 (Rights of Communities and Their Members) of the Constitutional Framework for Provisional Self-Government.

IV. PROTECTION AND PRESERVATION OF CULTURAL HERITAGE

4.1. Cultural heritage in Kosovo and Metohija deserves special protection and preservation;

First, because the valuable cultural monuments in Kosovo and Metohija represent a unique cultural legacy recognised long ago as European heritage;

Secondly, because the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage recognised the duty of each State Party to the Convention to ensure the protection, conservation and transmission to future generations of the cultural and natural heritage "situated on its territory."

Thirdly, because, together with the population and the land ownership, they represent the third incontestable criterion of establishing the rights of Serbs and Albanians in Kosovo and Metohija.

4.2. The cultural monuments in Kosovo and Metohija represent a unique legacy recognised between World War I and World War II as an integral part of the European heritage.

It is important to note that the cultural heritage in Kosovo and Metohija

- preserved the architecture and, in part, the art of the Roman and Byzantine Empires, the mediaeval Serb state, the Ottoman Empire and more recent Serb and Albanian architecture in an uninterrupted continuum of centuries, which is a unique case in the history of architecture and art;
- presents the peak of the Byzantine architecture and art;
- largely integrates the Orthodox Byzantine architecture with that of the Roman Catholics, which is also a unique phenomenon;
- preserved the monuments and sites that exemplify two centuries (from 1170 to 1371) of growth of the medieval Serbia as one of the developed European states;

This unique European cultural heritage must be preserved in its original form and, enriched, transferred to future generations. This is an imperative under all conventions concerning cultural heritage.

4.3. Based on the United Nations Security Council Resolution 1244, the Serb cultural heritage in Kosovo and Metohija is currently under the authority of the United Nations Interim Administration Mission in Kosovo (UNMIK). However, the legitimate inheritor and guardian of the cultural heritage in Kosovo and Metohija is the Republic of Serbia, because

- the Republic of Serbia protected and preserved the cultural heritage in Kosovo and Metohija on the basis of State laws;
- the mediaeval Serb State built most of the cultural monuments in Kosovo and Metohija and the most valuable of them;
- the cultural monuments are largely owned by the Serbian Orthodox Church;
- after the liberation from Turkish rule, Serbia found most of these monuments abandoned and in ruins. During the last century, the country invested enormous financial and human resources in their reconstruction;
- Principle 9 of the 1976 Vancouver Declaration on Human Settlements stipulates that *every country should have the right to be a sovereign inheritor of its own cultural values created throughout its history,* which is precisely the case of Serbian cultural heritage in Kosovo and Metohija.

Since June 1999, the UNMIK administration and Provisional Institutions of Self-Government have been trying to impose the term "Kosovo heritage", in a clear bid to alienate it from Serbia. Relevant international conventions and general practice make it clear that cultural heritage belongs to nations

or states. A territory cannot have a heritage. In its 2003 Report on the cultural heritage in Kosovo, UNESCO has avoided the term "Kosovo heritage", preferring the "cultural heritage in Kosovo."

4.4. The prevailing approach to the protection, preservation and maintenance of cultural heritage in Kosovo and Metohija is best illustrated by the following:

- UNMIK has failed to establish a body in charge of preserving the cultural heritage in Kosovo and Metohija, even though it had to do so under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Article 7, Paragraph 2). UNMIK has also failed to accept the responsibility for the protection of cultural property "within the territory of other High Contracting Parties", Serbia in this case, as provided for by Article 4 of the Hague Convention.
- Contrary to this obligation, UNMIK, led by political criteria, transferred the responsibility for the protection and preservation of cultural heritage to Provisional Institutions of Self-Government, even though aware that they have not reached the level of proficiency required for the task. Moreover, they showed no sign of willingness to carry out this duty effectively.

> Consequently, this unique cultural heritage was left without proper official care for more than four years. There was no one to save it from the ravages of time, which the world can only describe as an uncivilised act.

The entire period since June 1999, when the barbarous destruction of cultural heritage in Kosovo and Metohija began, as well as the latest events in Kosovo on March 17-19, makes it perfectly clear that the guarantees that have been offered are insufficient and that KFOR physical protection is not enough. Vandals in Kosovo and Metohija think that there is no legal guardian to take care of the Serb heritage in the province. On March 17 and 18 alone, 35 churches and monasteries were demolished and damaged – 16 of them being items of cultural heritage. The latest wave of destruction exceeded the post-war one of 1999, because two of six monuments of universal value, as defined by the 2003 UNESCO Report on Kosovo, were devastated – the Monastery of the Holy Archangels, with its tomb of King Dusan, and the unique Church of Bogorodica Ljeviska.

If the status of these monuments does not change, the same crime can happen again.

4.5. It is well known that the Serb cultural monuments are spread throughout the territory of Kosovo and Metohija. Accordingly, it requires dual protection - through the status of the cultural monuments within the Region and the status they may have outside the Region.

Within the Region, the responsibility for the preservation of cultural heritage has been defined as its autonomous power, exercised under the Law on Cultural Heritage of Serbia.

Outside the Region, the cultural monuments of major importance are to be granted the status of cultural property under the Republic of Serbia's direct administration. Such a status ensures the implementation of Article 6, Annex II of the U.N. Security Council Resolution 1244, which permits Serbian personnel "to maintain a presence at Serb patrimonial sites." It is necessary to establish criteria under which cultural property suitable for this status is selected. It must include the cultural heritage of special importance for the history and culture of Serbia and the Serbian Orthodox Church,

which can also qualify for the European cultural heritage. (the Pec Patriarchate, the Kosovo Battle Memorial, the tombs of the Nemanjic Dynasty rulers, the oldest medieval town in Serbia and all active monasteries). The reasonable assumption is that the list of monuments to be granted the exterritorial status will be made by an UNESCO expert committee, at the proposal of the Republic of Serbia.

V. RELATIONSHIP BETWEEN THE BODIES OF TERRITORIAL AUTONOMY (REGION) AND THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT IN KOSOVO AND METOHIJA

5.1. Principles on which the relationship is based

- the principle of subsidiarity
- the principle of equality of citizens in terms of exercise and protection of their basic freedoms and rights
- the principle of coordination
- the principle of harmonisation
- the principle of subordination

The relationship between Provisional Institutions of Self-Government and the Region should be defined normatively so as to ensure a high level of autonomy (substantial autonomy) for the Region in relation to the provisional institutions of self-government. This can be achieved by establishing a broad spectre of originery and transferred powers, which the Region can exercise independently and autonomously. Thus the Region can assume full responsibility for the duties failing within its competence. The principle of subsidiarity and a mechanism to solve possible conflicts of competence between the Region and provisional institutions of self-government can eliminate successfully the negative sides of a multi-level decision-making process typical of complex power distribution structures.

In exercising its powers and responsibilities, the autonomy of the Region would be limited by the universal principle of respect to human rights of all inhabitants of the Region. The restriction of the rights of the Region would also involve the principle of coordination of the work of regional bodies, as well as the harmonisation of acts and procedures of the regional administration in the application of law and other general enactments, through the activities of the Regional Administrator. Certain restrictions would be also placed on the implementation of the principle of subordination through measures in the supervising process exercised by the Provisional Institutions of Self-Government over the bodies of the Region. Furthermore, the autonomy of the Region would be limited considerably by the opportunity given to the Provisional Institutions of Self-Government to implement certain general regulations on the territory of the Region, when the very nature of them necessitates such an action.

5.2. Substance of the relationship

5.2.1. Any change to the status of territorial autonomy (Region) requires the consent of no less than two-thirds of all members of the Assembly of the Region.

5.2.2. In accordance with the principle of subsidiarity, apart from the originery powers of the Region, all powers that are not reserved to the SRSG and the provisional institutions of self-government are vested in the Region and municipalities.

5.2.3. In exercising their powers, the bodies of the Region cannot restrict the freedoms and rights of citizens guaranteed by the Constitutional Framework.

5.2.4. Regulations of the Region have primacy in implementation over the regulations of provisional institutions of self-government. In case of conflict between the two, a regional regulation will apply until the Special Chamber of the Supreme Court of Kosovo and Metohija makes a final decision.

5.2.5. The Special Chamber of the Supreme Court of Kosovo and Metohija decides in case of conflict of competence between the bodies of the Region and the Provisional Institutions of Self-Government.

5.2.6. The Executive Council of the Region is authorised to institute proceedings before the Special Chamber of the Supreme Court of Kosovo and Metohija over incompatibilities between the regulations of the Provisional Institutions of Self-Government and the Constitutional Framework, if they impinge upon the competence of the Region.

5.2.7. The regulations of the Region enacted within the competence of the Region must be in compliance with the basic act, the Statute of the Region. The Regional Court exercises control of their compliance with the Statute of the Region in administrative court proceedings.

5.2.8. The regulations of the Region endorsed for the purpose of implementation of the regulations of the provisional institutions of self-government must be in compliance with general enactments and the Constitutional Framework.

5.2.9. As a rule, the regulations of the provisional institutions of self-government are implemented on the territory of the Region by relevant regional bodies.

5.2.10. The bodies of the Provisional Institutions of Self-Government have the right to supervise the implementation of regulations of the Provisional Institutions of Self-Government by the bodies of the Region. In the supervising procedure, the bodies of the Provisional Institutions of Self-Government may point to irregularities in the implementation of their enactments. If after that the bodies of provisional institutions of self-government find out that the irregularities have not been eliminated, they can institute proceedings for the annulment of a regional general enactment before the Special Chamber of the Supreme Court of Kosovo and Metohija.

5.2.11. The regulations and decisions of the Provisional Institutions of Self-Government the nature of which requires their direct application by the Provisional Institutions of Self-Government on the territory of the Region, cannot go into force if a majority in the Serb parliamentary delegation to the

Parliament of Kosovo calls for a special procedure provided for issues of vital interest for the Serb national community.

5.2.12. If the harmonisation process fails to produce a consensus, a final decision will be made by a special Panel consisting of a representative of the Serb national community, a representative of the proponent and a member appointed by the SRSG.

5.2.13. The Assembly of the Region can initiate legislation falling within the competence of the Parliament of Kosovo and Metohija.

5.2.14. Prior to the adoption of a law of particular significance for the Region, the Parliament of Kosovo and Metohija is obliged to seek the opinion of the Assembly of the Region.

5.2.15. The Assembly of the Region can place an absolute veto on an international agreement made by the Provisional Institutions of Self-Government, if it is related to issues falling within the competence of the Region.

5.2.16. Amendments to the Constitutional Framework and laws of the Parliament of Kosovo and Metohija related to the rights to real estate located within the Region cannot go into force on the territory of the Region without the consent of the Assembly of the Region.

5.2.17. For the territory of the Region, the SRSG appoints a Regional Administrator, whose powers include the supervision of implementation of regulations passed by the Provisional Institutions of Self-Government, and harmonisation of the work of the regional administration with the provisional institutions of self-government.

5.2.18. The Regional Administrator is appointed from the list of five candidates nominated by the Assembly of the Region.

VI. PROCEDURE FOR THE ESTABLISHMENT OF THE AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

6.1. In order to establish the Autonomous Serb Community in Kosovo and Metohija, the United Nations Security Council must pass a Resolution. The purpose of this document would be the materialisation of special rights of the Serb community, as the only way to resolve promptly the question of its survival in the Province, and make it possible for two thirds of the Kosovo Serb population (around 220,000) expelled to central Serbia to return to their homes in Kosovo and Metohija. The experience gained in nearly five years of the U.N. military and civil presence in the Province has made it clear that the only way to ensure the survival and return of Kosovo Serbs is to implement a mechanism of interim administration within Kosovo and Metohija, which would be similar to that provided under Item 10 of the U.N. Security Council Resolution 1244 for the entire province "within the Federal Republic of Yugoslavia." It is the model of "substantial autonomy."

In terms of goals and content, the new U.N. Security Council Resolution would not replace Resolution 1244, but only add to it new provisions that would solve in principle the major problem in Kosovo and Metohija – the protection of rights of the Serb national community.

6.2. The new U.N. Security Council Resolution implies the drafting and promulgation of the Statute of the Autonomous Serb Community in Kosovo and Metohija. The Statute would define the Districts of the Region. The drafting of the Statute would be based on the drafting procedure applied in the case of the Constitutional Framework. The only difference would be apart from representatives of UNMIK, Kosovo Serbs and Kosovo Albanians (i.e. the Provisional Institutions of Self-Government), representatives of Serbia, i.e. Serbia and Montenegro would also take part in the process. This is necessary to ensure general consensus for the establishment of the Autonomous Serb Community in Kosovo and Metohija.

Following consultations between legitimate representatives of all parties concerned, the final text of the Statute of the Autonomous Serb Community in Kosovo and Metohija would be promulgated by a Decree promulgated by the SRSG.

6.3. Procedural operations should be completed as soon as possible, so that the Statute of the Autonomous Serb Community in Kosovo and Metohija can be applied immediately after its promulgation. The adoption and application of the Statute would provide sufficient guarantees for the Kosovo Serb community, including the majority expelled to central Serbia, so that they can live freely and participate in public life not only within the newly-established Region, but the whole of Kosovo and Metohija. Their participation in the elections for new regional bodies would be a strong encouragement for them to take part in the upcoming elections in Kosovo and Metohija. In a nutshell, the new organisation of the life of Serbs in the province would certainly open a new, peacetime page in the life of the multiethnic society of Kosovo and Metohija.

-

-

-

Annex: Status of Serbs Outside Territorial Autonomy (Region)

Freedom of expression of national identity

The freedom to express national affiliation is guaranteed.

No one is obliged to reveal his/her national affiliation.

Prohibition of Discrimination

Equality before the law and equal legal protection are guaranteed, regardless of national affiliation.

Any discrimination based on national affiliation is prohibited.

Measures to Ensure Equality

It is the duty of the provisional institutions of self-government to adopt, whenever necessary, appropriate measures to improve full and effective equality between members of different national communities, in all spheres of economic, social, political and cultural life.

Prohibition of Forcible Assimilation

Assimilation of members of national communities against their will is prohibited.

The provisional institutions of self-government are obliged to protect members of national communities against any action aimed at such assimilation.

Promotion of a Spirit of Tolerance

In the spheres of education, culture and information, the Provisional Institutions of Self-Government promote the spirit of tolerance and intercultural dialogue, and take effective measures to promote mutual respect, understanding and cooperation among all inhabitants of Kosovo and Metohija, regardless of their ethnic, cultural, linguistic or religious identity.

Prohibition of Incitement to Racial, National and Ethnic Hatred

Any incitement to, and instigation of, national, racial, religious or any other inequality, as well as any action to instigate or incite national, racial, religious or any other hatred and animosity are prohibited.

The Right to Preservation of Identity

Members of national communities can freely use their language and script, both in private and in public.

Members of national communities have the right to use their names and surnames in their own languages. They are also allowed to write their names in all identification documents using the language and spelling of their respective national communities.

On the territory of a self-governing municipality traditionally inhabited by a national community, the equal official use of their language and script is permitted. The official use of the language of a national community particularly concerns the following: court and administrative proceedings in the language of a national community; the use of the language of a national community in communication between public authorities and citizens; the issuance of identification documents and public registers kept in the language of a national community, as well as the acceptance of these documents as valid; the use of the language of a national community on ballot papers and in other electoral materials and in the work of representative bodies.

Members of national communities have the right to display traditional local names, the names of streets and settlements, and topographical indications in their own languages.

Members of national communities have the right to express, preserve, foster, develop, transfer and demonstrate in public their national, ethnic, cultural, religious and linguistic identity.

Members of national communities are entitled to appropriate representation in public services, the Provisional Institutions of Self-Government and local self-governments.

Members of national communities are entitled to education in their own languages in public pre-school, primary school and secondary school establishments.

Members of national communities have the right to establish private educational institutions at all levels.

Members of national communities have the right to choose and use their national symbols in public.

Members of national communities have the right to full and unbiased information in their own languages, including the right to express, receive, send and exchange information and ideas, as well as the right to establish their own media.

Right to Association

Members of national communities have the right to establish educational and cultural organisations and associations, financed on a voluntary basis.

The organisations and associations of national communities are granted a special role in the exercise of rights of their members.

Cooperation with Compatriots in the Region and Outside Kosovo and Metohija

Members of national communities have the right to maintain unhindered contacts and to cooperate with their compatriots living in the Region and outside the territory of Kosovo and Metohija.

Prohibition of Violations of the Rights of Members of National Communities

Measures that can change the population ratio in the areas inhabited by different national communities and those that can hinder the exercise and materialisation of their rights are prohibited.

Judicial Protection of the Rights of Members of National Communities

Members of national communities have to right to seek court protection of their rights.

Having exhausted all regular legal remedies, a member of a national community who considers his/her right violated or denied, can initiate proceedings for the protection of his/her rights before the European Court of Human Rights.

National Council of a National Community

Members of national communities can elect National Councils, in order to exercise their right to self-government in the spheres of use of language and script, education, information and culture.

The National Council represents the given national community in the spheres of official use of its language, education, information and culture, participates in the decision-making process and decides on relevant matters, and establishes institutions in these fields.

The Serb national community can decide that the functions of its National Council be performed by regional bodies.

Ombudsman for the Rights of Members of National Communities

The Ombudsman has the right to monitor respect of the rights of members of national communities and ensure promotion of these rights; to receive petitions from persons who believe that the rights they have as members of national minorities have been violated or denied, and to address the Provisional Institutions of Self-Government in connection with the petitions; to prepare draft legislation to ensure the implementation and promotion of the rights of national communities and, in the capacity of authorised proponent, to submit them to the provisional institutions of self-government for adoption; to institute proceedings for constitutional review before the Special Chamber of the Supreme Court of Kosovo and Metohija.